

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**THE ESTATE OF ROY C. ASHFORD,
by and through Terell Ashford, Administrator
of the Estate of Roy C. Ashford and
TERELL ASHFORD, Individually and on
behalf of all the wrongful death beneficiaries
of Roy C. Ashford,**

PLAINTIFFS,

VS.

CIVIL ACTION NO. 1:09CV262-P-D

**MISSISSIPPI DEPARTMENT OF CORRECTIONS;
ET AL.,**

DEFENDANTS.

PARTIAL FINAL JUDGMENT

This matter comes before the court upon Defendant Freddie Garnett's March 12, 2010 motion to dismiss [7] for failure to be served with a copy of the Complaint and a Summons. After due consideration of the motion, the court finds as follows, to-wit:

The plaintiffs filed their Complaint on October 27, 2009. Defendant Freddie Garnett's motion to dismiss was filed on March 12, 2010 – some 136 days after the plaintiffs filed their Complaint. The plaintiffs' deadline to respond to the instant motion to dismiss passed on March 29, 2010. As of this date, some five months later, the plaintiffs have filed no response. Thus, it remains undisputed that the 120-day requirement of Fed. R. Civ. P. 4(m) for service of process after the filing of the Complaint has expired.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Defendant Freddie Garnett's March 12, 2010 motion to dismiss [7] is **GRANTED**;
therefore,

(2) All of the plaintiffs' claims against Freddie Garnett are **DISMISSED WITHOUT**

PREJUDICE; and

(3) The plaintiffs' claims against the other defendants in this case remain.

SO ORDERED this the 30th day of August, A.D., 2010.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE